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May 27, 2003

RECEIVED

MAY 27 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary
Federal Communications Commission
Portals II
445 12th Street SW
Washington, DC 20554

Re: Comments and Counterproposal
MM Docket 03-87
Pearsall, Dilley and Batesville, Texas

Dear Ms. Dortch,

Transmitted herein is an original and 5 copies of a filing styled "Comments and Counterproposal" to be filed in the above captioned proceeding on behalf of Batesville Broadcasting Company.

Kindly file stamp one of the copies and return to this office in the enclosed self addressed stamped envelope.

Should there be any questions regarding the enclosed material, please contact this office.

Very truly yours,



F. W. Hannel, PE

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

RECEIVED

MAY 27 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
) MB Docket No. 03-87
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Dilley, Pearsall and)
Batesville, Texas¹)

To: The Allocations Branch Policy and Rules Division
Mass Media Bureau

COMMENTS AND COUNTERPROPOSAL

Now comes F. W. Hannel, dba Batesville Broadcasting Company, ("BBC"), pursuant to Sections 1.415 and 1.420 of the Commission's Rules and hereby files the instant Comments and Counterproposal in response to the Notice of Proposed Rulemaking released on April 4, 2003 in the above captioned proceeding.

The Notice of Proposed Rulemaking was issued by the Commission in response to a Petition for Rulemaking filed by Pearsall Radio Works, Ltd., ("PRWL") licensee of Radio Station KWWG-FM, Pearsall, Texas, whereby that licensee is seeking to delete the presently assigned FM Channel 237A at Pearsall, Texas and modify the license of that facility to specify operation on FM Channel 237A at Dilley, Texas. As a replacement backfill channel, PRWL is proposing the assignment of FM Channel 227A at Pearsall, Texas. As noted in the Notice of Proposed Rulemaking, ("NPRM"), the Commission specifically requested comment on the public interest factors associated with re-allotting a channel to provide a third service to a significantly smaller² community. PRWL is proposing to remove the third aural service³ from Pearsall, Texas, population 7,157 persons, to the much smaller community of Dilley, Texas, population

¹ Batesville, Texas has been added to the caption

² Notice of Proposed Rulemaking, DA 03-1013 at (4)

³ Pearsall, Texas is currently served by KWWG(FM), KMFR(FM) and by KWWG(AM)

3,674 persons, as potentially a third aural service⁴ and requested that the petitioner, PWRL, submit a gain loss study in its Comments⁵ and to document the public interest factors to be considered in moving the existing channel 237A from the larger community of Pearsall, Texas to the much smaller community of Dilley, Texas as a third aural service.

The proposal of BBC in these Comments and Counterproposal, requests that the Commission deny the proposal of PWRL and allot FM Channel 228C3 to the deserving community of Batesville, Texas as a first local service⁶. As is more fully outlined below, this proposal better serves the public interest by allotting a wide service area facility to the deserving community of Batesville, Texas and it has none of the inherent public interest defects associated with removing an existing aural service to a much smaller community and utilizing a backfill channel to restore the removed aural service⁷. The BBC proposal does not request any other changes in the FM Table of Allotments.

The community of Batesville, Texas is located in Zavala County on the Leona River at the intersection of US Highway 57 and FM 117 and the community has been in existence since the mid 1860's⁸. The city has a population of 1,298 persons and Zavala County has a population of 11,600 persons⁹. As is shown below, the community is fully qualified as a community for allotment purposes.

There are a number of businesses located in Batesville, the community operates its own school system, it has a local post office, a local water company serving local residents, a number of Zavala County offices, a church, as well as a number of other business and civic organizations. A partial list of the businesses in Batesville, Texas are shown as Exhibit 2, which clearly establish that Batesville, Texas is a viable community that meets all of the Commission's standards that qualify it as a community

⁴ NPRM at (3)

⁵ NPRM at (3)

⁶ There is a pending rulemaking in MB Docket 01-130 that proposes the assignment of FM Channel 250A to Batesville, Texas, however, the proposed assignment of FM Channel 228C3 to Batesville would provide that community with its first wide area aural service. Should the Commission eventually issue a Report and Order in MB Docket 01-130, this proposal would provide Batesville, Texas with a second aural service.

⁷ The Commission has abandoned the practice of allowing "backfill" channels in rulemaking proceedings. See *Memorandum Opinion and Order FCC 03-18*, released February 11, 2003 at paragraph 14, 15.

⁸ *Handbook of Texas*, See Exhibit 1

for allotment purposes.

The assignment of FM Channel 228C3 at Batesville, Texas can be made at reference coordinates¹⁰ N28-53-58, W99-35-40, 6 km from the community of Batesville. From this allotment site, the assignment fully complies with all of the Commission's allotment criteria, including the coverage of the city with the required signal intensity and with the Commission's minimum mileage separation requirements contained in Section 73.207 of its Rules.

In order to implement this counterproposal two minor changes are required. First, it is proposed that FM Channel 229A as proposed for assignment to Dilley, Texas, be changed to FM Channel 291A with a slight change in reference coordinates and FM Channel 289A that is proposed for Cotulla, Texas be changed to FM Channel 242A. These changes are technically equivalent channel changes for the communities involved as is more fully documented in the attached engineering statement.

In view of the foregoing, it is respectfully requested that the Commission issue a Public Notice looking toward amending the FM Table of Allotments as follows:

City	Present	Proposed
Batesville, Texas	----- ¹¹	228C3
Dilley, Texas	229A	291A
Cotulla, Texas	289A	289A (amended reference)

⁹ All population data are from the 2000 Census unless otherwise indicated

¹⁰ See attached Engineering Statement

¹¹ There is a proposal pending in MM Docket 01-130 to add FM Channel 250A to Batesville, Texas

If the Commission assigns Channel 227C3 to Batesville, Texas the petitioner will apply for the channel and, when authorized, will promptly construct the newly assigned facility.

The undersigned certifies, under penalty of perjury, that the statements made in these Comments and Counterproposal are true and correct to the best of the petitioners knowledge and are made in good faith.

WHEREFORE, in accordance with the above, Batesville Broadcasting Company respectfully requests that FM Channel 227C3 be assigned to Batesville, Texas and that the proposal of Pearsall RadioWorks, Ltd., seeking to delete the presently assigned FM Channel 237A at Pearsall, Texas and reassign that channel to Dilley, Texas as a third local service to that community, and to assign FM Channel 227A at Pearsall, Texas as a backfill replacement channel be denied.

May 27, 2003

Respectfully Submitted,
Batesville Broadcasting Company



F. W. Hannel

Batesville Broadcasting Company
10733 East Butherus Drive
Scottsdale, AZ 85255
(480) 585-7475

EXHIBIT 1

BATESVILLE, TEXAS (Zavala County). Batesville is on the Leona River at the intersection of U.S. Highway 57 and Farm Road 117, fifteen miles east of La Pryor in northeast Zavala County. The first settlers in the area were ranchers Mont Woodward in the mid-1860s and the Bates family around 1869. By 1870 the Bates brothers, Elijah, Felix, and Finis, had developed a large ranch in the area; it spawned the development of a small community known as Bates Ranch.

Elijah Anderson Bates chartered the Comanche Irrigation Company in 1876 in partnership with his two brothers to develop the region's first irrigation project on two sections of land granted to them by the state of Texas. To comply with provisions of the state-subsidized project Bates proceeded to dam the Leona River and channel its water through a canal system to over 500 acres of farmland. The Bates brothers sold the irrigated area in two-acre plots. The farm complex matured as a community and was thereafter known as Bates Ditch. With the organization of Zavala County in 1884, Bates Ditch became the county seat, and its name changed to Batesville. The Zavala county courthouse was built in Batesville in 1884 from bricks made of Leona River soil on land donated by Elijah Bates. It was the county's first rock structure and became the social center for the surrounding area. The same year a post office was established in the community. Throughout the 1880s residents of Batesville joined with those of Loma Vista for camp meetings at the Leona River; these early summer religious meetings were the social event of the year.

By 1892 Batesville had an estimated 500 inhabitants, three churches, a gristmill, and three general stores. In 1897 the community had two schools, three teachers, and a student body of sixty-one; by 1908 Batesville's three schools had an enrollment of 130 and four teachers. In 1914 the community had Baptist, Christian, and Methodist Episcopal (South) churches, telephone connections, and a weekly newspaper, the *Herald*. The Holmes Hotel, built on the southwest side of the courthouse plaza, burned down in 1915. Although Crystal City became the Zavala county seat in 1927, Batesville remained a trading center for the northeastern part of the county. Aggressive water-well drilling into the Leona gravel by a Mr. O'Keefe and the subsequent clearing of over 500 acres for irrigation south of the city ushered in large-scale farming. By 1933 Batesville had an estimated population of 200 and four businesses. In the late 1930s the population was two-thirds Anglo and one-third Hispanic. Immediately after World War II⁶⁶ the community installed electricity and developed an even larger irrigation system. In 1947 it had six businesses and an estimated population of 200. Neglect in maintaining the dam and canal system throughout the 1950s and a period of extreme drought until late in the decade led to the expiration of the Comanche Irrigation District Charter in 1959. In 1963 Batesville had 250 inhabitants and thirty businesses. Over the next decade, though, it lost over one-third of its population and nearly half its businesses. Local tradition indicates that political and racial tensions in Crystal City in the 1960s helped fuel a modest population increase in Batesville (see crystal city revolts). By 1988 Batesville had an estimated population of 200 and twelve businesses, three churches, and a school; numerous cafes and service stations were located on the frontage road for U.S. Highway 57 on the north edge of town. The community continued to revolve around its circular town plaza and its adjacent post office in 1990, when the population was 1,313.

Bibliography: Early History of Batesville, Organization of Zavala County, and Biographical Sketch of Elijah Anderson Bates (MS, Texas State Archives, Austin); Zavala County Historical Commission, *Now and Then in Zavala County* (Crystal City, Texas, 1985); *Zavala County Sentinel*, Centennial edition, July 25, 1958.

Exhibit 2

A Town & Country Propane

Batesville, TX 78829
Phone (830)376-4271

Aguirre Grocery & Market

Batesville, TX 78829
Phone (830)376-9295

Batesville Post Office

Batesville, TX 78829
Phone (830)376-4286

Batesville School

S Fm 117
Batesville, TX 78829
Phone (830)376-4221

Batesville Water Supply Corporation

S Fm 117
Batesville, TX 78829
Phone (830)376-4633

Bennett - Ranch

Batesville, TX 78829
Phone (830)376-4381

Bennett Richard H

Batesville, TX 78829
Phone (830)376-4381

Brewster Neal

Batesville, TX 78829
Phone (830)376-4261

Community Building

S Fm 117
Batesville, TX 78829
Phone (830)376-4331

Cuatro Light Cattle Co

Fm 140
Batesville, TX 78829
Phone (830)376-4421

First Baptist Church of Batesville

Bates St
Batesville, TX
Phone (830)376-4557

Frazell Edith Day

Batesville, TX

Phone (830)376-4373

Frio Gas Pipeline

Fm 187

Batesville, TX

Phone (830)376-4544

Green & Schweers Inc

Fm 187

Batesville, TX

Phone (830)376-4493

Hardin Shop

Batesville, TX

Phone (830)376-4311

Haynes Mary School House

Batesville, TX

Phone (830)376-9055

Hurd Ranch Co Ltd

Fm 140

Batesville, TX

Phone (830)376-4220

Hurd Ranch Co Ltd

Fm 187

Batesville, TX

Phone (830)376-4359

Justice of the Peace Precinct 1

260 S Farm Rd 117

Batesville, TX

Phone (830)376-4609

Laffere Farms

Batesville, TX

Phone (830)376-4289

Leona Valley Gin Co

Hwy 117 S

Batesville, TX

Phone: (830)376-4409

Uvalde Consolidated Independent

S Fm 117
Batesville, TX
Phone: (830)376-4419

Uvalde Consolidated Independent

Batesville, TX
Phone: (830)376-4524

Uvalde Consolidated Independent

Fm 117 Bldg Primary
Batesville, TX
Phone: (830)376-4222

Uvalde Consolidated Independent

S Fm 117
Batesville, TX
Phone: (830)376-4221

Uvalde Consolidated Independent

S Fm 117
Batesville, TX
Phone: (830)376-4419

Uvalde Consolidated Independent

S Fm 117
Batesville, TX
Phone: (830)376-4222

White Wesley

Batesville, TX
Phone: (830)376-4253

Winter Garden Co-Op

Bates St
Batesville, TX
Phone: (830)376-4272

Winter Garden Co-Op Office

Batesville, TX
Phone: (830)376-4402

Winter Garden Co-Op - Store

Bates St
Batesville, TX
Phone: (830)376-4214

Liveoak Feedlots Inc

Batesville, TX

Phone: (830)376-4302

McDay Energy

S. Fm 117

Batesville, TX

Phone: (830)376-4412

Panther City Cattle Company

S. Fm 117

Batesville, TX

Phone: (830)376-4520

Post Office

Batesville, TX

Phone: (830)376-4286

Roadrunner Energy Inc

N. Fm 117

Batesville, TX

Phone: (830)376-4253

Schools

Batesville Primary B

Batesville, TX

Phone: (830)376-4222

Schools - Batesville Primary

Batesville, TX

Phone: (830)376-4222

Schools - Batesville School

Batesville, TX

Phone: (830)376-4221

Three Star Energy Inc

Fm 187

Batesville, TX

Phone: (830)376-4544

U S Postal Service

Batesville, TX

Phone: (830)376-4639

United States Government – Post Office

Batesville, TX

Phone: (830)376-4286

Yomi's Restaurant

Hughway 67
Batesville, TX
(830) 376-4403

Zavala County Head Start

Batesville, TX
Phone: (830)376-4231

Zavala County Nutrition Center

Batesville, TX
Phone: (830)376-4406

Zavala County Shop

Bates St
Batesville, TX
Phone: (830)376-4418

ENGINEERING STATEMENT

Batesville Broadcasting Company

Comments and Counterproposal

MM Docket 03-87

Engineering Statement

This firm has been retained by Batesville Broadcasting Company to prepare this engineering statement in support of its counterproposal in the above captioned proceeding. The Commission is seeking comments on a proposal to delete the presently assigned FM Channel 237A at Pearsall, Texas and to amend the operating authority of Radio Station KWWG(FM) to specify operation on FM Channel 237A at the smaller community of Dilley, Texas and to replace the deleted FM Channel 237A at Pearsall, Texas with a backfill channel, FM Channel 227A. The petitioner is requesting that the Commission deny that proposal and assign FM Channel 227C3 to Batesville, Texas as that community's first local service.¹²

The community of Batesville, Texas is located in Zavala County in south Texas. The city has a population of 1,298 persons and Zavala County has a population of 11,600¹³ persons. The community of Batesville, Texas is not located in an urbanized area and the 70 dbu contour will not penetrate any urbanized area.

The assignment of FM Channel 228C3 can be made to the community of Batesville, Texas at allotment reference coordinates N28-53-58, W99-35-40 in full compliance with the Commission's minimum mileage separation and city grade illumination requirements. The allotment site is 6 km southeast of Batesville, Texas (US Atlas coordinates N28-57-03, W99-37-03), and a transmitter operating from this site will fully illuminate the entire city of Batesville with the required 70 dbu city grade coverage using the standard prediction methods as well as uniform earth assumptions. Attached as Exhibit E-1 is an FM Channel Study which shows that the assignment of FM Channel 228C3 at Batesville, Texas can be made in full compliance with the Section 73.207 of the Commission's Rules.

In order to allot the requested channel to Batesville, Texas, it is necessary to make only 2 additional minor changes to accommodate the wide service area channel at Batesville. First, the requested FM Channel 229A at Dilley, Texas must be changed to FM Channel 291A at coordinates 29-39-55, W99-17-22. This allotment site is 11.8 km from Dilley, Texas, and a

¹² There is a pending proposal to assign FM Channel 250A to Batesville, Texas in MB Docket 01-120

¹³ Populations are from the 2000 US Census

May 27, 2003.

Respectfully,

A handwritten signature in cursive script, reading "F. W. Hannel", written in black ink.

F. W. Hannel, PE

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with the Commission's city grade and mileage separation requirements, and the two minor allotment changes allow the addition of a wide coverage area facility to be located at Batesville, Texas as is proposed by the petitioner. See Exhibits E-2 and E-3 for channel studies relating to the proposed changes.

The petitioner is requesting that the Commission amend the FM Table of Allotments for Three Rivers, Texas as follows:

City	Present	Proposed
Batesville, Texas ¹⁴	228C3
Dilley, Texas	229A	291A
Cotulla, Texas	289A	289A (amended reference)

This proposal to add a first wide coverage area FM facility to the deserving community of Batesville, Texas is comparatively superior to the proposal to delete the existing service at Pearsall, Texas on FM Channel 237A and reassign it to the much smaller community of Dilley, Texas as a third aural service and to assign FM Channel 227A to Pearsall, Texas as a backfill channel. It is requested that this proposal to add a first wide coverage area FM service to Batesville, Texas be adopted and that the proposal of Pearsall RadioWorks, Ltd. be denied.

The undersigned certifies, under penalty of perjury, that the foregoing statements are true, correct and complete to the best of his knowledge. My qualifications are a matter of record with the Commission.

¹⁴ There is a proposal pending in MM Docket 01-130 to add FM Channel 250A to Batesville, Texas

Batesville Broadcasting Company

Comments and Counterproposal
MM Docket 03-87

FM Channel Study
FM Channel 2228C3
Batesville, Texas

Exhibit E-1
N28-53-58 W99-35-40

Call Sign	State	City	Freq	Class	D/km	Sep	Clr	
	TX	PEARSALL	93.3	227 A	47.17	89	-41.8	
	TX	DILLEY	93.7	229 A	51.27	89	-37.7 To 291	
KBNU	TX	UVALDE	93.9	230 C3	43.45	43	0.5	
	TX	GEORGE WEST	93.5	228 C3	153.01	153	0	
KBNU	TX	UVALDE	93.9	230 C3	42.89	43	-0.1	
DKLFO	TX	JUNCTION	93.5	228 C2	181.58	177	4.6	
KOOK	TX	JUNCTION	93.5	228 C2	181.58	177	4.6	
	CI	FUENTE	93.7	229 A	99.49	88	11.5	
	CI	JIMINEZ	93.3	227 A	107.31	88	19.3	
KROM	TX	SAN ANTONIO	92.9	225 C1	109.9	76	33.9	

All Distances in kilometers

Batesville Broadcasting Company

Comments and Counterproposal
MM Docket 03-87

FM Channel Study
FM Channel 291A
Dilley, Texas

Exhibit E-2
N28-39-55 W99-17-22

Call Sign	State	City	Freq	Class	D/km	Sep	Clr
	TX	COTULLA	105.7	A	27.66	31	-3.3 Chg coord
KCJZ	TX	TERRELL HILLS	106.7	C	95.03	95	0
KCJZ	TX	TERRELL HILLS	106.7	C	95.03	95	0
KRIO-FM	TX	HONDO	105.9	A	71.86	72	-0.1
KRIO-FM	TX	HONDO	105.9	A	75.99	72	4
	TX	DILLEY	95.3	A	14.31	10	4.3
KNEX	TX	LAREDO	106.1	A	128.9	115	13.9
KNEX	TX	LAREDO	106.1	A	128.96	115	14
88032400	TX	LAREDO	106.1	A	130.53	115	15.5
XHPSPFM	CI	PIEDRAS NEGRAS	106.3	B	120.03	105	15
XHPSPFM	CI	PIEDRAS NEGRAS	106.3	B	120.03	105	15
KWWG-FM	TX	PEARSALL	95.3	A	30.11	10	20.1

All Distances in kilometers

Batesville Broadcasting Company

Comments and Counterproposal

MM Docket 03-87

FM Channel Study
FM Channel 289A
Cotulla, Texas
(Amended Reference Site)

Exhibit E-3
N28-22-17 W99-17-10

Call Sign	State	City	Freq	Class	D/km	Sep	Clr
	TX	COTULLA	105.7 A		4.96	115	-110 Chg coord
	TX	ENCINAL	105.1 A		31.24	31	0.2
KTKO	TX	BEEVILLE	105.7 C3		142.86	142	0.9
KTKO	TX	BEEVILLE	105.7 C3		144.96	142	3
	TX	FREER	105.5 A		88.34	72	16.3
XHREFM	CI	PIEDRAS NEGRAS	105.5 B		126.1	105	21.1
XHREFM	CI	PIEDRAS NEGRAS	105.5 B		126.1	105	21.1
	CI	SABINAS	105.9 C		169.78	161	28.8
KRIO-FM	TX	HONDO	105.9 A		104.41	72	32.4
KRIO-FM	TX	HONDO	105.9 A		108.52	72	36.5
KUKA	TX	SAN DIEGO	105.9 C3		126.35	89	37.4
KSMG*	TX	SEGUIN	105.3 C		141.3	95	46.3

All Distances in kilometers

CERTIFICATE OF SERVICE

I, Fred Hannel, do hereby certify that copies of the foregoing Comments and Counterproposal have been served by United States mail, postage prepaid this 27th day of May, 2003, upon the following:

*Sharon McDonald
Federal Communications Commission
Mass Media Bureau
Portals II, Room 3-A266
TW-A35
445 12th Street SW
Third Floor
Washington, D.C. 20024

Harry C. Martin, Esq
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209
(Counsel for Pearsall RadioWorks, Ltd.)
(Via certified, receipt requested, US Mail)



F. W. Hannel, PE

* By Hand Delivery